

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Nevada Wireless)
)
Emergency Petition for Reconsideration)
and)
Emergency Motion for Stay of)
Minimum Opening Bids Order)
DA 97-2147)
)
800 MHz Specialized Mobile Radio Auction)
Upper 200 Channels)

ORDER

Adopted: July 21, 1999

Released: July 22, 1999

By the Deputy Chief, Wireless Telecommunications Bureau:

1. We have before us an Emergency Petition for Reconsideration ("Petition") and an Emergency Motion for Stay ("Stay Motion"), submitted by Nevada Wireless on October 14, 1997, of an order ("*Order*"), released by the Wireless Telecommunications Bureau ("Bureau") on October 6, 1997.¹ The *Order* established minimum opening bids for the 800 MHz Specialized Mobile Radio (SMR) auction (Auction No. 16), which was scheduled to begin on October 28, 1997. For the reasons set forth below, we dismiss Nevada Wireless's Petition and Stay Motion as moot.

2. The Balanced Budget Act of 1997 directed the Commission to prescribe methods to establish reasonable reserve prices or minimum opening bids for licenses subject to auction, unless the Commission determined that such reserve prices or minimum opening bids are not in the public interest.² On September 12, 1997, the Bureau released a public notice requesting comment on the use of minimum opening bids and reserve prices for Auction No. 16.³ Subsequently, on October 6, 1997, after considering the comments submitted, the Bureau released the *Order* adopting minimum opening bids.

¹ See In the Matter of 800 MHz SMR Auction Upper 10 MHz Band--Minimum Opening Bids or Reserve Prices, *Order*, DA 97-2147, 12 FCC Rcd 16354 (1997).

² The Balanced Budget Act of 1997, Pub. Law 105-33, 111 Stat. 251 (August 5, 1997), directs the Commission, in pertinent part, to "prescribe methods by which a reasonable reserve price will be required, or a minimum bid established, to obtain any licenses or permit being assigned pursuant to the competitive bidding, unless the Commission determines that such a reserve price or minimum bid is not in the public interest." *Codified at* 47 U.S.C. § 309(j)(4)(F).

³ "Comments Sought on Balance Budget Provisions Calling For Reserve Prices or Minimum Opening Bids in FCC Auctions," *Public Notice*, DA 97-1933 (rel. September 5, 1997).

3. Nevada Wireless submits various arguments to support its contention that the Bureau acted unlawfully in establishing minimum opening bids. For example, Nevada Wireless claims that the Bureau's actions in releasing the *Order* constitute an illegal delegation of authority on the part of the Commission. Nevada Wireless also believes that the *Order* is unlawful because it modifies procedures, such as the establishment of upfront payments, that Nevada Wireless claims are in themselves violations of the Commission's rules regarding delegated authority.

4. The 800 MHz SMR auction, in which Nevada Wireless was a high bidder on 16 licenses, began on October 28, 1997, and concluded on December 8, 1997.⁴ Therefore Nevada Wireless's Petition and Stay Motion are moot and we find it unnecessary to consider Nevada Wireless's arguments.⁵

5. IT IS ORDERED, pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131 and 0.331, that Nevada Wireless's Emergency Petition for Reconsideration and Emergency Motion for Stay ARE DISMISSED as MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Vaughan
Deputy Chief, Wireless Telecommunications Bureau

⁴ See "FCC Announces the Corrected Conditional Grant of 800 MHz SMR Licenses," *Public Notice*, DA 98-42 (rel. March 10, 1998); "800 MHz SMR Auction Closes: Winning Bidders in the Auction of 525 Specialized Mobile Radio Licenses," *Public Notice*, 12 FCC Rcd 20417 (1997).

⁵ See In the Matter of Auction of 800 Mhz SMR Upper 10 MHz Band--Minimum Opening Bids or Reserve Prices, *Order*, DA 97-2147, 12 FCC Rcd 16354 (1997).